

1799. terposition of this Court, to which her settlers, the defendants below, cannot originally resort? It is a fundamental principle of the law of nature and of nations, that every government is bound to preserve peace and order, to protect individuals, to indemnify those who trust to its faith, and to prevent a dismemberment of its territory. This political and moral obligation, enforced by a regard to her public improvements, and fiscal operations, creates an interest of the highest character in the government of *New-York*; and such as the Court will cherish with all its benevolence and authority. 21 *Vin. Abr.* 181. *pl.* 1. *Ibid.* 183. *pl.* 4, 5. 7. *Ibid.* *pl.* 8. 11. 3 *Black. Com.* 255, 6.

The COURT, after advisement, delivered their opinion, that as the State of *New-York* was not a party to the suits below, nor interested in the decision of those suits, an injunction ought not to issue.

Injunction refused. (5)

The same Cause.

AS the state of *Connecticut* did not appear, *Hoffman* moved that she should appear on the first day of next term, or that the plaintiff be then at liberty to proceed *ex parte*. 3 *Dal.* 335. But *Lewis* observed, that the rule required that a *subpoena* issuing in a suit in equity, should be served sixty days before the return; which had not been done in the present case. The first motion was, thereupon, waived; and an *alias subpoena* awarded. 3 *Dall.* 320.

*Hazlehurst et al. versus The United States.*

IN error from the Circuit Court for the district of *South-Carolina*. A rule had been obtained by *Lee*, the attorney-general, at the opening of the Court, that the plaintiffs appear and prosecute their writ of error within the term, or suffer a *non-pros.*: but it was found, that errors had been assigned in the Court below, and

(5) *Hoffman*. In every grant by *New-York*, there is a reservation of gold and silver mines, and of five acres per cent. for roads. The bill might, besides, be amended, by averring the state to be interested in a residuum of the land, if that would be sufficient to sustain the prayer for an injunction.

WASHINGTON, *Justice*. The amendment would not satisfy me; for, my opinion is founded upon the fact, that *New-York* is not interested in the suits below.

CHASE, *Justice*. It is a mere bill to settle boundaries; and we must take it as we find it; not as it might be made.

ELLSWORTH, *Chief Justice*. If there had been a quorum of judges, without my attendance, I should have declined sitting in this cause. As it is, I am glad that the opinion of my brethren, dispenses with the necessity of my taking a part in the decision.

a joinder

a joinder in error entered here. The rule was, therefore, changed to the following: "that unless the plaintiffs in error appear and argue the errors to-morrow, a *non-pros.* be entered." The plaintiffs not appearing, the writ of error was non-prossed, according to the rule. 1799.

Turner, Administrator, *versus* Enrille.

**E**RROR from the Circuit Court of *South-Carolina*. The record, as abridged for the Judges, presented the following case:

"The Marquis de Caso *Enrille* instituted an action on the case against *Thomas Turner*, the administrator of *Wright Stanley*, in the Circuit Court of *North-Carolina*, of *June* term 1795.

"A declaration in case was filed 'by the Marquis de Caso *Enrille*, of in the island of ' of *June* term 1796, in which it is set forth, that *Wright Stanley* (the intestate) and *John Wright Stanley* and *James Greene* were 'merchants and partners at *Newbern* in the said district;' that *Wright Stanley* survived the other partners; that on the 4th of *June* 1791, in the lifetime of all the partners, they were indebted 'unto the said Marquis in dollars;' and in consideration thereof, assumed to pay, &c. The 2d count *insimul computassent*, when the said partners 'were found in arrear to the said Marquis in other dollars,' &c. The plaintiff concludes with the usual averments of non-payment, 'to the damage of the said Marquis dollars,' &c.

"On the 30th of *November* 1796, the defendant appeared, and pleaded, 1st. *Non assumpsit intest.* Replication and issue. 2d. The statute of limitations as to the intestate: Replication, *an account current between merchant and factor.* Rejoinder and issue. 3d. Set-off, that the plaintiff was indebted to the intestate, on the 1st of *January* 1792, in more than the damages by the plaintiff sustained; &c. to wit, in 4000 dollars, for money had and received by the plaintiff to the intestate's use, which sum is still due to the defendant, as administrator. Replication that plaintiff owed nothing, &c. Rejoinder and issue. 4th. The statute of limitations as to the administrator. Replication that the demand was made within three years, &c. Rejoinder and issue. 5th. *Plene administravit.* Replication assets. Rejoinder and issue.

"On the 1st of *June* 1799, the issues were tried, a verdict was given on all the issues for the plaintiff, and the jury assessed damages at 3289 $\frac{4}{10}$  dollars. Judgment for damages, costs and charges.

"Writ of error. Errors assigned: 1st. That it does not appear on the pleadings, &c. that either plaintiff or defendant was an alien or that they were citizens of different states. 2d. That there are blanks in the declaration for places, dates, and sums. 3d. The general errors. Plea, *In nullo est erratum.* Replication and issue."

For